

International Law Definitions

- **natural law** God, or nature, or universal reason has given humanity a law from which the norms of all human law must be derived. The role of human beings is to simply deduce natural law correctly. There is very little agreement on the definition of "right reason," however.
- **legal positivism** Positivism doesn't consider what the law ought to be, nor whether some other entity is the source of law. International law is what states have consented to, expressed in custom and treaties, and logical deductions therein. Criticized because consent is too artificially assumed.
- **ius cogens** A norm of general international law is accepted and recognized as something to be respected, and not to be deviated from. Easily accepted by the Natural Law school, but there is no agreement on its substance. An example is the prohibition on the use of force to settle conflicts.
- **Alien Tort Claims Statute** A domestic principle that says if damage is done in violation of the laws of nations in a foreign country, it is the first nation's jurisdiction. If two foreigners move to the US, one having violated international law through torturing the other, the latter may bring suit for damages against the former.
- **Act of State Doctrine** Acts performed within another state's jurisdiction should be recognized and respected by other states, even if such acts violate international law, or other states' public policy. The doctrine has been used to avoid US courts giving judgement on government acts performed in other countries.
- **ordre public** The substance of international law comes from society. It is a concept expressing a people's concept of morality, decency and justice. It is elastic and comprehensive, allowing for evaluation in the spirit of the law.
- **ICJ** The International Court of Justice in the Hague is where international legal disputes are adjudicated. Its decision is non-binding, unless the optional clause is precommitted to by the states involved, making them liable to follow the courts' decision. All parties involved in the dispute must agree to adjudication before it can proceed.
- **arbitration** Two parties decide that they will have someone else rule on their dispute. Different from adjudication, because each side chooses who will arbitrate. The decision of the arbitrator(s) is binding.
- **Universal Declaration of Human Rights 1948**. A UN declaration, signed and ratified by most of the world's countries, adhered to a great degree only by a few. Closest that the world has come so far to recognizing people as subjects of IL. However, a violation of human rights can, for the most part, still only be prosecuted between states
- **Exclusive Economic Zone** The EEZ is a zone 200 nautical miles beyond the boundaries of, and adjacent to, a nation-state's territorial waters, where it has jurisdiction, but not sovereignty. This practice is formalized in the UN Convention on the Law of the Sea.
- **Clausula rebus sic stantibus** A clause that says that a treaty can be ruled non-applicable if circumstances change fundamentally from the time of the signing of the treaty. This cannot be used if one of the parties produced the change through a breach in its obligations, or if there was a time limit set in the treaty which has not yet been reached.
- **Comprimis** In arbitration, the opposing parties must agree upon the principles and procedures of the arbitration, the subject matter with which to deal, the power and jurisdiction of the arbitrator(s), the make up of the arbitration council, and the nature of the award to be given. In adjudication, most of these factors are all prescribed by law.
- **CEDAW** The Convention on the Elimination of all forms of Discriminations Against Women is predominantly non-discriminatory, meaning that men and women are considered to have equal rights. Critics claim that it does not address violence against women and that it has a low rate of compliance.
- **customary law** Applicable to all subjects, it is ranked by the ICJ as secondary in importance only to treaties. It is held to exist if
 - a. objectively, does this custom exist (frequency and history)
 - b. subjectively, is this the norm of behavior (opinion juris)

- **Law of the Sea** A comprehensive 1982 convention which attempts to create a regime for the oceans. Has yet to be enacted because not enough states have ratified it; too comprehensive, in the opinion of many states.
- **Pacta sunt servanda** All treaties are binding and cannot be broken. This concept implies an actual enforceability of international law which is lacking in general IL.
- **convention refugee** The definition of a refugee from the 1951 convention: one who has decided to leave their place of habitual residence and who has crossed a national boundary because of a well-founded fear of persecution, whether political, social, religious, or ethnic.
- **ABM Treaty**
- **Geneva Convention** A convention following WWII which discussed the rules for war, the boundaries not to be crossed, such as chemical weaponry, and genocide. As well, it addresses the rights of non-combatants. Nuclear weapons basically violate this convention, and this is being brought to the ICJ for adjudication.

[Return to Howard Fienberg's home page](#)